in parentheses following the decisions being modified.

Volume I

New York
NY950002 (Feb. 10, 1995)
NY950003 (Feb. 10, 1995)
NY950004 (Feb. 10, 1995)
NY950005 (Feb. 10, 1995)
NY950006 (Feb. 10, 1995)
NY950008 (Feb. 10, 1995)
NY950013 (Feb. 10, 1995)
NY950017 (Feb. 10, 1995)
NY950018 (Feb. 10, 1995)
NY950022 (Feb. 10, 1995)
NY950031 (Feb. 10, 1995)
NY950033 (Feb. 10, 1995)
NY950034 (Feb. 10, 1995)
NY950037 (Feb. 10, 1995)
NY950038 (Feb. 10, 1995)
NY950039 (Feb. 10, 1995)
NY950040 (Feb. 10, 1995)
NY950042 (Feb. 10, 1995)
NY950046 (Feb. 10, 1995)
NY950048 (Feb. 10, 1995)
NY950049 (Feb. 10, 1995)
NY950051 (Feb. 10, 1995)
NY950074 (Feb. 10, 1995)
NY950077 (Feb. 10, 1995)

Volume II

Pennsylvania
PA950005 (Feb. 10, 1995)

Volume III

Kentucky
KY950003 (Feb. 10, 1995)
KY950004 (Feb. 10, 1995)
KY950027 (Feb. 10, 1995)
KY950028 (Feb. 10, 1995)
KY950029 (Feb. 10, 1995)
KY950035 (Feb. 10, 1995)

Volume IV

Illinois
IL950015 (Feb. 10, 1995)
Indiana
IN950004 (Feb. 10, 1995)
IN950006 (Feb. 10, 1995)
Minnesota
MN950007 (Feb. 10, 1995)
MN950008 (Feb. 10, 1995)
MN950012 (Feb. 10, 1995)
MN950015 (Feb. 10, 1995)
MN950027 (Feb. 10, 1995)
MN950031 (Feb. 10, 1995)
MN950035 (Feb. 10, 1995)
MN950039 (Feb. 10, 1995)
MN950058 (Feb. 10, 1995)
MN950059 (Feb. 10, 1995)
MN950061 (Feb. 10, 1995)
Ohio
OH950001 (Feb. 10, 1995)
OH950002 (Feb. 10, 1995)
OH950003 (Feb. 10, 1995)
OH950028 (Feb. 10, 1995)
OH950029 (Feb. 10, 1995)
OH950034 (Feb. 10, 1995)
Wisconsin
WI950008 (Feb. 10, 1995)
WI950010 (Feb. 10, 1995)
WI950019 (Feb. 10, 1995)
WI950020 (Feb. 10, 1995)
WI950021 (Feb. 10, 1995)

Volume V

Iowa
IA950004 (Feb. 10, 1995)
IA950005 (Feb. 10, 1995)
IA950010 (Feb. 10, 1995)
IA950014 (Feb. 10, 1995)
IA950016 (Feb. 10, 1995)
IA950031 (Feb. 10, 1995)
IA950032 (Feb. 10, 1995)
Kansas
KS950007 (Feb. 10, 1995)
KS950012 (Feb. 10, 1995)
KS950013 (Feb. 10, 1995)
KS950018 (Feb. 10, 1995)
Missouri
MO950002 (Feb. 10, 1995)
MO950004 (Feb. 10, 1995)
MO950005 (Feb. 10, 1995)
MO950006 (Feb. 10, 1995)
MO950007 (Feb. 10, 1995)
MO950008 (Feb. 10, 1995)
MO950009 (Feb. 10, 1995)
MO950010 (Feb. 10, 1995)
MO950011 (Feb. 10, 1995)
MO950012 (Feb. 10, 1995)
MO950013 (Feb. 10, 1995)
MO950014 (Feb. 10, 1995)
MO950015 (Feb. 10, 1995)
MO950016 (Feb. 10, 1995)
MO950019 (Feb. 10, 1995)
MO950020 (Feb. 10, 1995)
MO950041 (Feb. 10, 1995)
MO950042 (Feb. 10, 1995)
MO950043 (Feb. 10, 1995)
MO950047 (Feb. 10, 1995)
MO950048 (Feb. 10, 1995)
MO950049 (Feb. 10, 1995)
MO950050 (Feb. 10, 1995)
MO950051 (Feb. 10, 1995)
MO950052 (Feb. 10, 1995)
MO950053 (Feb. 10, 1995)
MO950056 (Feb. 10, 1995)
MO950058 (Feb. 10, 1995)
MO950059 (Feb. 10, 1995)
MO950060 (Feb. 10, 1995)
MO950062 (Feb. 10, 1995)
MO950063 (Feb. 10, 1995)
MO950064 (Feb. 10, 1995)
MO950065 (Feb. 10, 1995)
MO950066 (Feb. 10, 1995)
MO950067 (Feb. 10, 1995)
MO950068 (Feb. 10, 1995)
MO950069 (Feb. 10, 1995)
MO950070 (Feb. 10, 1995)
MO950072 (Feb. 10, 1995)
MO950074 (Feb. 10, 1995)
MO950075 (Feb. 10, 1995)
MO950076 (Feb. 10, 1995)
MO950077 (Feb. 10, 1995)
MO950078 (Feb. 10, 1995)
Oklahoma
OK980017 (Feb. 10, 1995)

Volume VI

California
CA950004 (Feb. 10, 1995)
Colorado
CO950021 (Feb. 10, 1995)
CO950022 (Feb. 10, 1995)
Hawaii
HI950001 (Feb. 10, 1995)
Wyoming
WY950004 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 14th day of July 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–17817 Filed 7–20–95; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Application No. D–09611, et al.]

Proposed Exemptions: General Motors Retirement Program, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written

comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue NW., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

General Motors Retirement Program for Salaried Employes (the GM Salaried Plan); General Motors Hourly Rate Employes Pension Plan (the GM Hourly Plan); the Saturn Individual Retirement Plan for Represented Team Members (the Saturn Plan); Saturn Personal Choices Retirement Plan for Non-Represented Team Members (the Saturn Choices Plan); and Employees' Retirement Plan for GMAC Mortgage Corporation (the GMAC Plan; collectively, the Plans)

Located in New York, New York

Application Nos. D–09611, D–09612 and D–09809

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply, effective May 21, 1993, to the purchase by a partnership (the Partnership) of a parcel of improved real property (the Property) located in Washington, DC, from Collin Equities, Inc. (the Seller), a party in interest with respect to the Plans, pursuant to an agreement which provided that the Plans would invest in the Partnership upon purchase of the Property, provided the following conditions are met:

(a) the terms of the purchase of the Property were no less favorable to the Plans than those negotiated at arm's length in similar circumstances with unrelated third parties;

(b) the fair market value of the Property was determined by an independent, qualified appraiser;

(c) the Plans paid no commissions or fees in regard to the transaction; and

(d) prior to investing in the Partnership an independent, qualified fiduciary acting on behalf of the Plans, reviewed and recommended approval of the transaction and determined that the transaction was in the best interest of the Plans and the participants and beneficiaries of such Plans.[1]

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective retroactively, as of May 21, 1993.

Summary of Facts and Representations

1. It is represented that the Plans are qualified under section 401(a) of the Code and were established by GM to provide retirement benefits to its eligible salaried and hourly employees and to employees of approximately twenty (20) GM affiliates worldwide.[2] The Plans which are the applicants for this proposed exemption are the GM Salaried Plan, the GM Hourly Plan, the Saturn Plan, the Saturn Choices Plan, and the GMAC Plan. As of October 1, 1993, the GM Salaried Plan, the GM Hourly Plan, the Saturn Plan, and the Saturn Choices Plan covered approximately 831,532 participants (both active employees and retirees) and beneficiaries. In addition, as of June 21, 1994, there were approximately 2,761 participants in the GMAC Plan.

2. The control and management of the assets of the Plans (including the investments described herein) are under the authority of the Finance Committee (the Committee) of the Board of Directors of GM, which is the ''named fiduciary'' (as such term is defined in the Act) of the Plans. In this regard, it is represented that the Committee acts on behalf of the Plans through duly authorized delegates. One such delegate of the Committee is the General Motors Investment Management Corporation (GMIMCO), a wholly-owned subsidiary of GM established in 1990. In this regard, GMIMCO serves as the investment manager for the Plans. As of December 31, 1992, GMIMCO had approximately $7.7 billion in assets under its management, including a portion of the assets of the Plans.

GMIMCO maintains a staff of investment experts who work for the Plans and for certain affiliates of GM.

[1] For purposes of this exemption reference to specific provisions of title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] It is represented that employers whose employees are covered by the Plans are as follows: (1) GM; (2) Delco Electronics Service Corporation; (3) Fisher Lumber Corporation; (4) GMAC; (5) GMAC, Australia; (6) GMAC, Colombia, S.A. (7) GMAC, Continental; (8) GMAC, International; (9) GMAC, South America; (10) General Motors Investment Management Corporation; (11) General Motors Interamerica Corporation; (12) General Motors Overseas Corporation; (13) General Motors Overseas Distribution Corporation; (14) GMAC Capital Corporation; (15) GM Personnel Services, Inc.; (16) Holdens Motor Overseas Corporation; (17) Motors Insurance Corporation; (18) Motors Trading Corporation; (19) Saturn Corporation; (20) MIC Re Corporation; and (21) GMAC Mortgage Corporation.

GMIMCO is compensated by GM for the services it renders to the Plans, and to the extent permitted by the Act, the Plans reimburse GM for GMIMCO's expenses.[3]

3. It is represented that GM has established various trusts, exempt from tax under section 501(a) of the Code, to hold and manage the invested funds used for providing benefits under the Plans. In this regard, certain assets of the GM Hourly Plan, the Saturn Plan, the Saturn Choices Plan, and the GMAC Plan are held in one master trust (the Hourly Trust), while certain assets of the GM Salaried Plan are held in another master trust (the Salaried Trust). As of September 30, 1993, the aggregate fair market value of the assets of the Hourly Trust and the Salaried Trust was approximately $19.7 billion and $20.8 billion, respectively.

It is represented that the Hourly Trust and the Salaried Trust are the sole beneficial owners of the First Plaza Group Trust (the Group Trust), a New York trust, which is also exempt from taxation under section 501(a) of the Code. Mellon Bank, N.A. serves as trustee of the Group Trust. GMIMCO has authority, responsibility, and control with respect to the assets of the Plans invested in the Group Trust and also serves as the independent fiduciary for the transaction described below which is the subject of this proposed exemption. Further, in August 1990, the Plans engaged Sarofim Realty Advisory (Sarofim) (formerly FS Realty Partners) of Dallas, Texas, an experienced real estate investment advisory firm, to serve as non-discretionary investment advisor to the Plans and to GMIMCO.

4. On August 9, 1991, the Group Trust entered into a subscription agreement (the Subscription Agreement) with the Hines Acquisitions No. 1 Limited Partnership, a Texas limited partnership. The Hines Acquisitions No. 1 Limited Partnership serves as the general partner (the GP) in the Partnership in which the Plans are invested. The GP is unrelated to GM, the Plans, or any other parties involved in the transactions. The Partnership is a Texas limited partnership known as the 1991 Acquisition Fund No. 1 Limited Partnership. It is represented that the GP organized the Partnership for the purpose of acquiring, improving, managing, operating, leasing, redeveloping, selling, and disposing of commercial office and retail real estate. Pursuant to the terms of the Subscription Agreement, the Group Trust agreed to become the sole limited partner of the Partnership.

5. In connection with the formation of the Partnership, the GP and the Group Trust executed a partnership agreement (the Partnership Agreement) which was attached to and incorporated by reference into the Subscription Agreement. It is represented that contributions to capital of the Partnership under the Partnership Agreement were to be made 5 percent (5%) by the GP and 95 percent (95%) by the Group Trust.[4] As of September 30, 1993, the percentages of the fair market value of the Hourly Trust and the Salaried Trust committed through the Group Trust to the Partnership were 0.48% and 0.46%, respectively.

Under the terms of the Partnership Agreement, the GP is, among other things, responsible for all decisions regarding acquisition, financing redevelopment, leasing, managing, and disposition of real estate owned by the Partnership. The GP also retains oversight over persons retained to provide assistance or services in connection with such matters. In this regard, it is represented that the Partnership has been and will be managed by the GP by affiliates of the GP, or through independent contractors retained by the Partnership, pursuant to the terms of third party management agreements, the form and content of which has been approved by the Group Trust. Additional responsibilities of the GP, include preparing budgets in connection with acquisitions, operations, renovations, and improvements for each property the Partnership owns and maintaining books, records, and bank accounts for the Partnership. Further, the GP has the exclusive responsibility to identify investment opportunities for the Partnership and to negotiate the acquisition of such investment opportunities. As a limited partner in the Partnership, the Group Trust does not have the right to propose or negotiate acquisitions on behalf of the Partnership. However, the Group Trust, acting through GMIMCO, does have the right to approve all acquisitions by the Partnership which have been negotiated by the GP.

6. In July, 1992, the GP identified the Property as the first long-term investment opportunity for the Partnership. The Property is described as a twelve story office building (the Building), built in 1991, located at 700 Eleventh Street, N.W. on 37,370 square feet of land (the Land) at a subway station in the heart of downtown Washington, DC. The Building, commonly referred to as the Edward Bennett Williams Building, has 292,919 square feet of net rentable office space, 8,803 square feet of net rentable retail space on the first floor, and a five (5) level underground parking garage. It is represented that, as of March 1, 1993, 55.2% of the Property was leased. As of December 16, 1993, the tenants of the Property were: (1) Williams & Connolly, a law firm, with a lease dated September 24, 1991; (2) Kimberly-Clark Corporation, with a lease dated December 20, 1991; and (3) Massachusetts Mutual Life Insurance Company, with a lease dated April 30, 1993. It is represented that none of the lessees are parties in interest with respect to the Plans.

At the time the Property was identified in July 1992, as a possible investment for the Partnership, the GP entered into discussions with the owner of the Property. The Seller is a Texas corporation which is wholly-owned by Wells Fargo Bank, N.A. (Wells Fargo). It is represented that unbeknownst to the GP in July 1992, Wells Fargo was then serving as a fiduciary with respect to other assets of the Plans not involved in the Partnership. Accordingly, the Seller, by virtue of being a wholly-owned subsidiary of Wells Fargo, was a party in interest with respect to the Plans when the GP negotiated the purchase of the Property.

It is represented that after the principal business terms of the transaction were established through competitive bidding with other potential purchasers, the GP was selected by the Seller as the most attractive buyer. It is represented that in October 1992, officials at GMIMCO, following routine practices designed to avoid engaging in prohibited transactions, identified the Seller as a subsidiary of a service provider with

[3] The applicants state that any fees or expenses received by GMIMCO for the provision of services to the Plans, the compensation received by GMIMCO from GM, or the reimbursement by the Plans to GM of expenses incurred by GMIMCO in the provision of such services will satisfy the requirements as set forth in section 408(b)(2) of the Act. However, the Department is providing no opinion as to whether the payment of any fees, expenses, compensation, or reimbursement under the circumstances described herein would satisfy the requirements of section 408(b)(2) of the Act and the regulations thereunder (see 29 CFR 2550.408b-2).

[4] It is represented that based on contributions of capital, the Group Trust is a 95 percent (95%) limited partner in the Partnership that owns the Property. However, under the terms of the Partnership Agreement, in certain favorable scenarios with regard to the internal rate of return, the General Partner's right to receive distributions of profits can increase from 5 percent (5%) to 15 percent (15%). The Department, herein, is offering no relief from any of the provisions of part 4, subpart B, of Title I of the Act with respect to the receipt by the GP of compensation based on this performance incentive feature in the Partnership Agreement.

respect to the Plans, albeit one without any authority or responsibility with respect to the assets involved in the subject transaction.

Subsequently, on February 17, 1993, the GP and the Seller executed a purchase and sale agreement (the Purchase Agreement) in which the Seller agreed to sell the Property to the GP for a purchase price of $60,000,000. For purposes of the Purchase Agreement, the Property included: (a) the Land; (b) the Building; (c) the related tangible personal property and fixtures (the Personalty); (d) all leases, licenses, and occupancy agreements demising the space in the Building (the Leases); (e) prepaid rents and deposits; (f) certain contracts (*e.g.*, warranties, indemnities, licenses, permits) to the extent assignable without cost; (g) other miscellaneous property (*e.g.*, telephone exchanges, trade names, trademarks, plans, drawings, surveys, and technical descriptions; and (h) except as specifically limited or excluded, all maintenance, service, and utility contracts that relate to the ownership, maintenance, construction, repair, and/or operation of the Land, the Building, the Personalty, and the Leases. In accordance with the terms of the Purchase Agreement, the GP subsequently, at closing on May 21, 1993, assigned its rights as purchaser of the Property to the Partnership.

7. Pursuant to the terms of the Subscription Agreement, the GP and the Group Trust agreed to form the Partnership on the date that the Partnership first invested in real estate. Accordingly, prior to the date the Partnership acquired the Property, it is represented that the Partnership had no assets. In this regard, the capital contributions of the Hourly Trust and the Salaried Trust committed through the Group Trust to the Partnership were used to pay the Group Trust's *pro rata* share of the purchase price for the Property. It is represented that the Partnership acquired the Property at closing on May 21, 1993, for a purchase price of $60,000,000.

8. An appraisal of the Property was performed independently by Delta Associates, Inc. (Delta), a qualified appraisal firm in Alexandria, Virginia. The appraisal report, dated April 5, 1993, was prepared in conjunction with a loan disbursed at closing on May 21, 1993, by Credit Lyonnais Cayman Island Branch to the Partnership secured by the Property. However, Delta has consented to the use of such appraisal report in conjunction with this proposed exemption.

In the appraisal report, Delta estimated that, as of March 1, 1993, the market value of the leased fee interest in the Property on an ''as is'' basis was $72 million and on an ''as if stabilized'' basis was $88 million. In the opinion of Delta after the ''first stabilized year of operation,'' assumed to be March 1995, the fair market value of the leased fee interest in the Property will be $95 million. In addition, Delta estimated that the ''insurable value'' of the Property, as of March 1, 1993, was $47.4 million.

9. Subsequently, on December 16, 1993, the subject application for retroactive exemption from the prohibited transaction restrictions of the Act was filed on behalf of the Plans with the Department.

10. The applicants maintain that, while the issue is not free from doubt, the Partnership is a real estate operating company, as defined in 29 CFR § 2510.3–101 and therefore the sale of the Property to the Partnership by the Seller was not a *direct* prohibited transaction between the Plans and a party in interest. In this regard, the applicants obtained an opinion of counsel with respect to the issues of whether the Partnership constituted a ''real estate operating company'' on the date of the purchase by the Partnership of the Property and whether the purchase of the Property by the Partnership from the Seller, a party in interest with respect to the Plans, constituted a prohibited transaction under section 406 of the Act.

In the opinion of the applicants, no exemption from the restrictions of section 406 of the Act relating to direct prohibited transactions is necessary in connection with the sale of the Property by a party in interest to the Partnership nor for receipt of any compensation by the GP of the Partnership, because the purchase of the Property by the Partnership did not involve assets of the Plans by virtue of the operation of the Partnership as a ''real estate operating company.'' [5]

Notwithstanding their reliance on the plan assets analysis described above, the applicants continue to request retroactive relief under section 406(a) for any *indirect* prohibited transaction that may have occurred. The applicants point out that authority on the issue of what constitutes an ''indirect'' prohibited transaction is still quite sparse. In the opinion of the applicants, the following elements of the subject transaction, taken together, raise an *indirect* prohibited transaction issue: (1) the purchase of the Property by the Partnership and the Group Trust's investment in such Partnership occurred on the same day; (2) the Group Trust's investment provided the Partnership with 95 percent (95%) of the funds used to cover the purchase price of the Property; and (3) the Property and the Seller had been specifically identified prior to the time the funds were forwarded by the Group Trust to the Partnership. Further, of particular interest to this issue is the fact that the Partnership is not designed to be a ''blind pool'' investment vehicle where a general partner, so long as it follows the criteria set forth in a partnership agreement, has plenary discretion to invest committed partnership funds in any real property meeting those criteria and the unfettered ability to call funds from a limited partner to complete such investments without any approval rights in such limited partner. Rather, the Group Trust as subscriber had a right to examine and approve or disapprove the specific investment opportunity of the Partnership in the Property, although upon the signing of the Subscription Agreement in 1991, the Group Trust became committed to invest up to $95 million in the Partnership at such times as appropriate investments were identified and the Partnership was formed. Accordingly, at the time the Group Trust actually purchased its interest in the Partnership and

[5] Under the ''plan asset'' regulations of the Department, as set forth in 29 CFR § 2510.3–101(h)(3), when a plan or a related group of plans owns all of the outstanding equity interests (other than director's qualifying shares) in an entity, its assets include those equity interests and all of the underlying assets of the entity. The applicants maintain that, while for purposes of establishing a limited partnership under Texas law, a general partner must be named in the certificate of limited partnership, the GP, here, is obligated to contribute a significant amount of capital to the Partnership and, thus, is participating in the Partnership for reasons other than to satisfy the minimum state law requirements for treatment of the Partnership as a partnership. Accordingly, the applicants believe that the Partnership assets would not be treated as plan assets for the purpose of applying the fiduciary responsibility requirements of the Act.

In addition, under the ''plan asset'' regulations of the Department, as set forth in 29 CFR § 2510.3–101(e), an entity is treated as a real estate operating company if at least 50 percent of its assets are invested in real estate which is managed or developed and with respect to which the entity has the right to substantially participate directly in management or development activities. Further, in the ordinary course of its business, the entity must actually engage in real estate management or development activities. The applicants maintain that they are comfortable in relying on their own analysis that the Partnership operation meets these requirements.

The Department, herein, is expressing no opinion whether the underlying assets of the Partnership are ''plan assets'' or whether the Partnership, as established or in the manner operated, satisfies the definition of a ''real estate operating company.'' Further, the Department is not proposing relief, herein, for any *direct* transaction between the Partnership or the Plans and a party in interest with respect to such Plans.

forwarded its 95 percent (95%) *pro rata* share of the initial capital call on the day of the closing, May 21, 1993, the Group Trust and the GP knew that the proceeds of the purchase of its interest in the Partnership would be forwarded almost immediately by the GP together with the GP's own capital contribution on behalf of the Partnership, to the Seller, a party in interest with respect to the Plans.

Although applicants' counsel in analyzing these elements concluded that no indirect prohibited transaction occurred, counsel represents that this conclusion is ''not entirely free from doubt,'' in part because of the dearth of authority on what constitutes an indirect prohibited transaction. The applicants believe that the investment by the Group Trust in the Partnership could be viewed as an indirect sale or exchange of property between the Plans and a party in interest, the Seller, in violation of section 406(a)(1)(A) of the Act or a use of plan assets by or for the benefit of a party in interest in violation of section 406(a)(1)(D) of the Act. Accordingly, the applicants seek retroactive relief from such provisions of the Act at closing on May 21, 1993, the date when the transaction was entered.

11. The applicants maintain that the requested retroactive exemption is warranted, because the transaction was consummated under conditions that assured that the rights of participants and beneficiaries of the Plans were protected. In this regard, Sarofim served as an advisor to GMIMCO with respect to, among other things, whether to approve the acquisition of the Property by the Partnership as proposed by the GP. Specifically, it is represented that Sarofim reviewed and recommended the Partnership investment to GMIMCO and recommended approval of the Property acquisition. Further, GMIMCO, acting as investment manager on behalf of the Plans, after considering the terms of the acquisition of the Property, as negotiated by the GP, and the recommendations and analyses of Sarofim, made the ultimate decision on behalf of the Plans and the Group Trust to invest in the Partnership and to approve the acquisition of the Property by such Partnership. It is represented that Sarofim is unaffiliated with the Seller or Wells Fargo, and that there is no direct or indirect affiliation between GMIMCO (or GM) and Wells Fargo or the Seller.

It is represented that the terms of the Partnership Agreement were negotiated by GMIMCO and Sarofim, on behalf of the Plans, at arm's length with the GP. Neither GMIMCO, GM, nor Sarofim have any direct or indirect affiliation with the GP. Additionally, the terms of the Partnership Agreement were negotiated at a time when the opportunity to acquire the Property had not arisen.

The purchase price for the Property paid by the Partnership and the non-price terms of the acquisition were negotiated on an arm's length basis between unrelated parties, the GP and the Seller. Further, the purchase of the Property was also reviewed and recommended by Sarofim and approved by GMIMCO.

Although the Seller of the Property is a party in interest with respect to the Plans, it is represented that this status resulted solely by reason of the Seller's relationship to Wells Fargo, a service provider with respect to other assets of Plans not involved in the Partnership. In this regard, it is represented that Wells Fargo was not a trustee of the Group Trust and had no authority, responsibility, or control with respect to the assets of the Group Trust that were invested in the Partnership. Further, it is represented that Wells Fargo does not have, and did not exercise, any of the authority, control or responsibility that makes it a fiduciary with respect to the Plans in connection with the decision by the Plans (acting through GMIMCO) to invest through the Group Trust in the Partnership or the decision by the Plans (acting through GMIMCO) to approve the Partnership's investment in the Property.

On August 9, 1991, at the time the Group Trust entered into the Subscription Agreement, it is represented that there was no arrangement for the Partnership to specifically acquire the Property. Rather, the Partnership agreement called for the Group Trust to 95 percent (95%) fund the purchase of a property once identified by the GP and agreed to by GMIMCO. Neither the Plans, the Group Trust, GMIMCO, nor Sarofim participated in the search for the Property. It is represented that the GP had no knowledge of the relationship between Wells Fargo and the Plans in July 1992, at the time the Property was identified as an investment opportunity for the Partnership. It is further represented that officials at GMIMCO did not know that the Seller was a subsidiary of a service provider with respect to the Plans until October 1992. In addition, Sarofim, an experienced real estate investment advisory firm, has served since August 1990, as non-discretionary investment advisor to the Plans and to GMIMCO. Accordingly, it is represented that the Group Trust's commitment to become a limited partner in the Partnership was not in any way conditioned on the acquisition of the Property.

11. It is represented that the transaction was in the interest of the Plans and their participants and beneficiaries. In this regard, the acquisition of the Property was consummated on terms customary in the commercial real estate market after extensive negotiations between the GP and the Seller who are unrelated. The purchase price was competitively bid by the GP and approved by both Sarofim and GMIMCO. It is represented that the GP negotiated a purchase price of $60 million that is approximately 14 percent (14%) lower than the $69.9 million dollar asking price for the Property. Further, Delta's appraisal of the Property indicated a value for the Property of $72 million on an ''as is'' basis in March, 1993, which was approximately 20 percent (20%) above the purchase price paid by the Partnership. Accordingly, prior to consummation of the acquisition of the Property at the $60 million dollar purchase price, both GMIMCO and Sarofim specifically concluded that the acquisition of the Property at the price negotiated by the GP was in the best interest of the Plans.

It is represented that Sarofim analyzed at length the potential acquisition of the Property taking into account various scenarios regarding pricing, absorption/leasing, tenant finish costs, tenant expansions, renewal of leases, residual capitalization rates, and financing parameters. Based on this exhaustive analysis, Sarofim recommended to the Plans a pricing range for the Property that would warrant the Group Trust's approval of the acquisition by the Partnership. It is represented that as the ultimate acquisition price for the Property was within the recommended range, both Sarofim and GMIMCO determined that the favorable pricing of the Property would help produce an attractive return for the Plans and was thus in their best interest.

It is further represented that the acquisition of the Property was recommended to the Plans for the following reasons: (a) the Property is a recently completed Class ''A'' building with high quality systems and construction quality; (b) the Property has advantageous sub-surface parking, which is a major leasing advantage in its market; (c) the Property was 53 percent (53%) leased at the time of the transaction, primarily to a prestigious national law firm with excellent credit; (d) tenants have demonstrated a strong demand to lease vacant space in

commercial buildings located in the East End submarket of Washington, DC over the past five (5) years; (e) the Property has direct access to a major transfer station in the subway system; (f) the Property has access to adjacent and nearby hotels and to retail amenities; (g) the shape of the Property facilitates either full-floor users or multi-tenant layouts; and (h) the recommended pricing range was considered substantially below the replacement cost for the Property. Sarofim and GMIMCO concluded that for all of the above reasons the acquisition of the Property should help to form the core of real estate-related investments for the Plans.

After reviewing the analysis of Sarofim, GMIMCO concluded that the ownership of a substantial limited partnership interest in the Partnership that acquired the Property for a price within the range recommended would give the Plans the dual benefits of (1) stable returns from participation in high quality office and retail buildings in attractive urban real estate markets at advantageous prices, and (2) joint investment with the GP and its affiliate, Hines LP, a national real estate development and management firm with expertise in the acquisition, management, and leasing of such properties. Accordingly, both GMIMCO and Sarofim concluded that the proposed acquisition of the Property was favorable to the Partnership and by extension to the Plans.

12. The applicants maintain that the exemption is administratively feasible, because the transaction involves a one-time event that has been completed. In this regard, as the transaction has already been consummated, it is represented that no ''ongoing'' involvement of the Department will be required to implement the exemption.

13. In summary, the applicants represent that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) the terms of the Partnership Agreement were negotiated at arm's length between the GP, acting on behalf of the Partnership, and GMIMCO and Sarofim, acting on behalf of the Plans;

(b) the terms of the Partnership Agreement were negotiated at a time when the Property acquisition opportunity had not arisen;

(c) the terms of the Purchase Agreement for the Property were negotiated at arm's-length between the GP and the Seller, who are unrelated parties;

(d) the acquisition of the Property was consummated on terms customary in the commercial real estate market;

(e) GMIMCO and Sarofim, respectively, an experienced real estate investment manager and an advisor acting on behalf of the Plans, reviewed, recommended, and approved the subject transaction;

(f) GMIMCO and Sarofim determined that the subject transaction was feasible, in the interest of the Plans, and protective of the participants and beneficiaries of such Plans;

(g) the fair market value of the Property was determined by Delta, an independent, qualified appraiser;

(h) the Plans paid no commissions or fees in regard to the transaction;

(i) the transaction involved a one-time event that has been completed and does not require monitoring.

Notice to Interested Persons

It has been requested on behalf of the Plans that the Department waive the requirement to separately notify each participant, retiree, and beneficiary of the Plans of the proposed transaction. In this regard, it is represented that the time and expense of individually notifying such parties is substantial. Further, it is represented that the interests of the current employees are identical to those of the retirees, terminated participants, and beneficiaries with respect to the exemption application. In this regard, the current employees can effectively and adequately represent such interests. Moreover, several groups of employees are represented by unions, which will be notified as described in the paragraph below. Accordingly, the Department has determined that the only practical form of providing notice to interested persons is by posting on all bulletin boards normally used for employee notices of this nature by all GM-affiliated employers whose employees are covered by the Plans a copy of the notice of pendency of this proposed exemption (the Notice) as published in the **Federal Register**, a summary of the exemption request, as approved by the Department (the Summary), together with the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2) (the Supplemental Statement), which shall inform all interested persons of their right to comment. Such posting shall occur within ten (10) days of the date of the publication in the **Federal Register** of the Notice. In addition, within ten (10) days of the publication of the Notice in the **Federal Register**, GM will mail first-class to each of the unions representing employees covered by the Plans a copy of the Notice, the Summary, and the Supplemental Statement. The names of the unions specifically to be notified are as follows: (1) International Union, United Automobile, Aerospace and Agricultural Implement Workers of America; (2) Brotherhood of Carpenters and Joiners of America; (3) International Die-Sinkers Conference; (4) International Union of Electronic, Electrical, Technical, Salaried Machine & Machine Workers, AFL-CIO; (5) Pattern Makers League of North America, AFL-CIO; (6) International Union of Operating Engineers; (7) Metal Polishers, Buffers, Platers and Allied Workers International Union; (8) International Brotherhood of Electrical Workers; (9) International Association of Machinists; (10) International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; (11) United Rubber, Cork, Linoleum and Plastic Workers of America; (12) Sign, Pictorial and Display Union, Brotherhood of Painters, Decorators and Paperhangers; (13) United Plant Guard Workers of America; and (14) Automotive, Petroleum and Allied Industries Employe Union.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

John B. Toomey Rollover IRA (the IRA) Located in Lorton, Virginia
[Application No. D–09819]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed installment sale of 36.2 shares of common stock (the Stock) in JBT Holding Corporation (JBT) by the IRA [6] to JBT, a disqualified person with respect to the IRA; provided that: (a) the purchase price JBT pays for the Stock is the *greater* of $410,146 or the fair market value of the Stock on the date of the sale; (b) the fair market value of the Stock is determined by a qualified independent appraiser, as of the date of the sale; (c) the terms of the transaction are no less favorable to the IRA than those negotiated at arm's length with unrelated third parties in similar circumstances; (d) the trustee of the IRA monitors compliance with the terms of

[6] Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

the transaction throughout the duration of the installment sale; (e) the IRA receives a cash downpayment of no less than $210,146 on the date of the sale and thereafter receives three (3) equal annual installment payments of $66,667, the first of which is due and payable December 31, 1995, plus interest at the fair market rate of interest, as determined by an independent, qualified third party, as of the date of the transaction, on the outstanding balance of the installment payments, payable annually until all the installment payments have been made by JBT on or before December 31, 1997; (f) the outstanding balance of the installment payments at no time exceeds 25 percent (25%) of the value of the assets of the IRA; (g) the outstanding balance on the installment payments is secured by a recorded first mortgage interest in real property pledged by JBT in favor of the IRA; (h) the collateral which secures the installment payments has a value, as determined by an independent, qualified appraiser, which at all times is no less than 150 percent (150%) of the outstanding balance of the installment payments; and (i) the IRA pays no commissions, fees, or other expenses in connection with the transaction.

Summary of Facts and Representations

1. The IRA is a self-directed IRA described in section 408(a) of the Code. John B. Toomey (Mr. Toomey), the applicant for exemption, is the creator of the IRA, and the sole participant and beneficiary in the IRA. It is represented that Advest, Inc., located in Washington, DC, serves as the trustee of the IRA and has custody over the Stock held in the IRA. However, Mr. Toomey has investment discretion over the assets of the IRA, including the Stock, and therefore, is a fiduciary and a disqualified person with respect to the IRA, pursuant to section 4975(e)(2)(A) of the Code. As of September 9, 1994, the IRA had approximately $810,775 in total assets. As of September 9, 1994, approximately 50.6 percent (50.6%) of the IRA's assets consisted of JBT Stock. The remaining portion of the IRA's assets are held in other securities and cash. It is represented that the IRA acquired the JBT Stock as a result of a rollover by Mr. Toomey of a distribution to him of his vested benefits from a PAYSOP/401(k) plan (the PAYSOP), a tax qualified pension plan sponsored by VSE Corporation (VSE).

2. VSE, a Delaware corporation with offices in Alexandria, Virginia, is engaged in the business of providing engineering services. In 1992, due to differences between Mr. Toomey and other members of the VSE management group regarding future business activities, VSE was split into two separate groups, pursuant to a tax free reorganization under section 368(a)(1)(D) of the Code. To effectuate such reorganization, JBT, a Delaware corporation with offices located in Lorton, Virginia, was created in August 6, 1992. As part of the reorganization, VSE transferred all of the issued and outstanding shares of stock in three (3) VSE subsidiaries to JBT in exchange for all of the shares of JBT Stock. The exchange agreement was approved by VSE stockholders on October 17, 1992 and became effective October 31, 1992. In a concurrent transfer, VSE distributed all of the JBT Stock to Mr. Toomey, the members of his immediate family, and the PAYSOP in exchange for an aggregate of 808,649 shares of VSE common stock which these parties owned on October 17, 1992. Concurrent with the exchange of stock pursuant to the reorganization, Mr. Toomey separated from service from VSE and received a lump sum distribution as a participant in the VSE PAYSOP and in another pension plan sponsored by a VSE affiliate. It is represented that this distribution was rolled over within the sixty (60) day rollover period into the IRA. It is represented that a part of this rollover distribution consisted of the JBT Stock which in the reorganization had been exchanged for shares of VSE common stock held in the PAYSOP.

3. JBT is the parent holding company of three (3) wholly owned subsidiaries: (a) Metropolitan Capital Corporation (MetCap); (b) Design & Production, Inc. (D&P); and (c) Starr Management Corporation (Starr). It is represented that, as of December 31, 1993, on a consolidated financial statement the total assets of JBT and its subsidiaries was $20,318,107. Mr. Toomey is the president and the chief executive officer of JBT. Mr. Toomey also serves on the Board of Directors of JBT.

MetCap, a Delaware Corporation incorporated in 1970, is an investment company that provides venture capital to companies which, in general, are closely-held, non-mature small business concerns. Mr. Toomey is the president and chief executive officer of MetCap. MetCap pays a management and administrative services fee to JBT.

D&P, incorporated in Virginia in 1949 under the name Industrial Display, Inc., is an exhibit and graphics design firm which fabricates and installs custom exhibits and audio-visual systems for museums, trade shows, theme parks, and other exhibitions under fixed-price contracts with various governments and private industries. D&P owns the building which includes the offices and shop of JBT in Lorton, Virginia. Julian F. Barnwell, a minority shareholder and member of the Board of JBT is the President of D&P.

Starr, a Delaware corporation established in 1972, primarily engages in property management and secondarily in property development. Starr owns the collateral which will secure the outstanding balance of the installment payments with respect to the proposed transaction. Mr. Toomey is the president and chief executive officer of Starr. Starr pays a management and administrative services fee to JBT.

4. The stock of JBT is closely held by Mr. Toomey, his immediate family, and his IRA. Mr. Toomey and his family own a 96.38 percent (96.38%) interest or 963.8 shares out of the 1000 issued and outstanding shares of JBT Stock. The IRA owns a 3.62 percent (3.62%) interest in JBT or 36.2 shares of the 1,000 issued and outstanding shares of JBT Stock. As Mr. Toomey and his family are the only shareholders of the Stock, other than the IRA, there is concern that potential conflicts of interest may arise between the actions Mr. Toomey takes on behalf of his IRA and the business decisions he makes with respect to JBT. Mr. Toomey is also concerned that the diversification and liquidity of the IRA portfolio is limited by the IRA's continued holding of the Stock. Accordingly, Mr. Toomey requests an exemption to permit JBT to purchase the Stock from the IRA. In this regard, JBT is a disqualified person with respect to the IRA, pursuant to section 4975(e)(2)(G) of the Code, because fifty percent (50%) of the Stock of JBT is owned by Mr. Toomey, a fiduciary and disqualified person with respect to the IRA.

5. JBT has offered to purchase the 36.2 shares of the JBT Stock currently held by the IRA at the *greater* of $410,146 or the fair market value of the Stock on the date of the sale. However, in this regard, it is represented that JBT would suffer a large cash drain in paying all of the purchase price to the IRA in a single lump sum. For this reason, JBT proposes to purchase the Stock in an installment sale. It is represented that immediately upon execution of the transaction JBT will receive all of the Stock from the IRA in exchange for a cash downpayment of $210,146 of the purchase price made to the IRA. Thereafter, it is represented that JBT will pay off the remaining portion of the purchase price of the Stock in three (3) equal annual installment payments of $66,667. The first of the installment payments is due and payable December 31, 1995. Further, JBT proposes to pay

annually interest at the rate of 10 percent (10%) per annum on the outstanding balance of the installment payments, until all installment payments have been made on or before December 31, 1997. In this regard, C.S. Burke III (Mr. Burke), Senior Vice President of Burke & Herbert Bank and Trust Company of Alexandria, Virginia, after reviewing the terms of the transaction, stated, in a letter dated December 29, 1994, that the terms of the proposed transaction are commercially reasonable with regard to common banking practices of which he is familiar, carry a reasonable rate of interest, and have terms which conform to standard lending practices. It is further represented that Mr. Burke will determine that the interest rate paid by JBT on the outstanding balance of the installment payments will not be less than the fair market interest rate, as of the date the transaction is entered. With regard to the payment of interest by JBT, Loretta S. Sebastian, vice president and secretary of JBT, has represented in a letter dated December 28, 1994, that she is the corporate official responsible for ensuring that all installment payments, plus interest payable to the IRA, shall be paid timely and completely by JBT when due.

It is anticipated that the outstanding balance of the installment payments at no time will exceed 25 percent (25%) of the value of the assets of the IRA and will be secured by the value of the Stock and by a recorded first mortgage interest in the value of two (2) parcels of real property (the Properties). It is represented that upon satisfactory payment of the third and final installment payment to the IRA, the mortgages encumbering the Properties shall be cancelled and the 36.2 shares of JBT Stock then held by JBT shall be retired.

6. The two Properties which JBT will pledge to secure the outstanding balance of the installment payments are described as three bedroom residential townhouse condominiums in the Mill Creek Condominium development. The Properties, located at 758 and 762 Belle Field Road on Solomons Island in Dowell, Maryland, are rented for $950 and $995 a month, respectively. Both of the Properties were five (5) years of age in 1993, and are listed in good condition.

7. On September 1, 1993, the Properties were appraised by Ruth Hendricks and John W. Hersman, SRA, of Maryland Appraisal Services, Inc., located in Prince Frederick, Maryland. The appraisers are independent in that they have no present or prospective interest in the Properties and no personal interest or bias with respect to the parties involved. The appraisers are qualified to value the Properties in that each is certified by the State of Maryland and are members of professional organizations.

As of June 1, 1993, the property located at 758 Belle Field Road was appraised at $200,000. As of June 2, 1993, the property located at 762 Belle Field Road was appraised at $195,000. It is represented that the aggregate appraised fair market value of the two Properties is $395,000 which will constitute approximately 198% of the total installment payments due to the IRA after the downpayment has been made by JBT.

8. It is represented that selling the Stock to JBT is in the interest of the IRA and that the proposed transaction will increase the liquidity of the IRA and facilitate distributions required by law. In this regard, as Mr. Toomey is presently seventy (70) years of age, and it is represented that in the near future the IRA will need more cash than it currently holds in order to make distributions in a timely manner and in the correct amount to Mr. Toomey.

Further, as the JBT Stock constitutes more than 50% of the value of the total assets of the IRA, the IRA's portfolio lacks diversification. In this regard, it is represented that the proposed transaction is in the interest of the IRA in that a non-liquid, non-performing asset will be replaced at not less than its fair market value by an asset that is both liquid and performing.

9. It is represented that the transaction is feasible in that the IRA will incur no commissions, fees, or other expenses in connection with the transaction. In this regard, Mr. Toomey has represented that he will be personally responsible for any and all costs incurred as a result of the proposed transaction. Further, Mr. Toomey represents that the cost of the exemption application and of notifying interested persons will be borne by JBT.

10. It is represented that the purchase price for the Stock proposed by JBT is protective of the IRA in that the IRA will receive the *greater* of $410,146 or the fair market value of the Stock on the date of the sale, as determined by a qualified independent appraiser. In this regard, for the purpose of determining the fair market value of the Stock, a valuation of JBT and its subsidiaries was prepared in a *Business Valuation Report* dated July 20, 1994, by Councilor, Buchanan & Mitchell, P.C., a certified public accounting firm with offices in Bethesda, Maryland (the CPA). According to the CPA, the value of JBT and its subsidiaries, as of December 31, 1993, was $15,107,258, and the value of the 1,000 shares of Stock issued and outstanding equaled $15,107 per share. However, in the opinion of the CPA, a 25 percent (25%) discount on the adjusted net assets of JBT should be imposed for lack of marketability. In this regard, the CPA considered the illiquidity of JBT's corporate assets and the related costs to market and consummate sales transactions for the unrelated business operations of the JBT subsidiaries, as negative influences on the value of JBT. Accordingly, the CPA determined that the discounted value per share of the Stock equalled $11,330. Based on this evaluation, it is represented that the aggregate fair market value of the 36.2 shares of the JBT Stock held by the IRA was $410,146, as of December 31, 1993. It is represented that neither the professionals who worked on this valuation nor the officers or directors of the CPA have any financial interest in JBT, nor was the fee contingent on the value reported for the Stock.

It is further represented that the terms of the proposed transaction are no less favorable to the IRA than those negotiated at arm's length with unrelated third parties in similar circumstances. In this regard, Mr. Burke, an independent qualified third party has determined that the terms of the proposed transaction are commercially reasonable and conform to standard lending practices and that the interest rate is reasonable. It is further represented that Mr. Burke will determine that the interest rate paid by JBT on the outstanding balance of the installment payments will not be less than the fair market interest rate, as of the date the transaction is entered.

Further, the interests of the IRA will be protected throughout the duration of the transaction. In this regard, it is represented that a new legal document will be drawn that appoints Advest Bank as trustee for the limited and express purpose of holding and enforcing the provisions of the proposed transaction. It is anticipated that the assets which are the subject this proposed exemption will be held separately from other IRA assets which are under the custody of Advest, Inc. To accomplish this, a separate custody account will be established at Advest Bank. It is represented that Advest Bank will be responsible for collecting from JBT the installment payments and the interest when due. It is represented that the cash so received by Advest Bank will be transferred on a trustee-to-trustee basis into the IRA at Advest Inc. In the event JBT defaults, it is represented that Advest Bank will foreclose on the Properties which serve

as collateral and secure the outstanding balance of the installment payments in order to protect the IRA.

11. In summary, Mr. Toomey, the applicant, represents that the proposed transaction meets the statutory criteria of section 4975(c)(2) of the Code because:

(a) the purchase price JBT pays for the Stock will be the *greater* of $410,146 or the fair market value of the Stock on the date of the sale;

(b) the fair market value of the Stock will be determined by a qualified independent appraiser, as of the date of the sale;

(c) the terms of the transaction will be no less favorable to the IRA than those negotiated at arm's length with unrelated third parties in similar circumstances;

(d) Advest Bank, acting as trustee on behalf of the IRA, will monitor compliance with the terms of the transaction throughout the duration of the installment sale;

(e) the IRA will receive a cash downpayment of no less than $210,146 on the date of the sale and thereafter will receive three (3) equal annual installment payments of $66,667, the first of which is due and payable December 31, 1995, plus interest at the fair market rate of interest, as determined by an independent, qualified third party, as of the date of the transaction, on the outstanding balance of the installment payments, payable annually until all the installment payments have been made by JBT on or before December 31, 1997;

(f) the outstanding balance of the installment payments will at no time exceed 25 percent (25%) of the value of the assets of the IRA;

(g) the outstanding balance on the installment payments will be secured by a recorded first mortgage interest in real property pledged by JBT in favor of the IRA;

(h) the collateral which will secure the installment payments has a value, as determined by an independent, qualified appraiser, which at all times will be no less than 150 percent (150%) of the outstanding balance of the installment payments; and

(i) the IRA will pay no commissions, fees, or other expenses in connection with the transaction.

Notice to Interested Persons: Because Mr. Toomey is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of this notice in the **Federal Register**.

For Further Information Contact: Angelena C. Le Blanc of the Department (202) 219–8883. (This is not a toll-free number.)

John L. Rust Co. Profit Sharing Plan (the Plan) Located in Albuquerque, New Mexico [Application No. D–09943]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the past and proposed purchases by the Plan of certain leases of equipment (the Leases) from John L. Rust Co. (Rust), the Plan sponsor and a party in interest with respect to the Plan, and (2) the agreement by Rust to indemnify the Plan against any loss relating to the Leases and also to repurchase any Leases that are in default in accordance with paragraph (E) below, provided that the following conditions are met:

A. Any sale of Leases to the Plan will be on terms at least as favorable to the Plan as an arm's length transaction with an unrelated third party would be.

B. Subsequent to the date of publication of this proposed exemption, the acquisition of a Lease from Rust shall not cause the Plan to hold immediately following the acquisition (i) more than 25% of the current value (as that term is defined in section 3(26) of the Act) of Plan assets in customer notes and Leases sold by Rust or (ii) more than 10% of Plan assets in the aggregate of Leases with and customer notes of any one entity.

C. Prior to the purchase of each Lease, an independent, qualified fiduciary must determine that the purchase is appropriate and suitable for the Plan and that any Lease purchase is a fair market value transaction.

D. The independent fiduciary, on behalf of the Plan, will monitor the terms of the Leases and the exemption and take whatever action is necessary to enforce the rights of the Plan.

E. Upon default by the lessee on any payment due under a Lease, Rust has agreed to repurchase the Lease from the Plan at the payout value[7] as of the date of the default, without discount, and to indemnify the Plan for any loss suffered. The occurrence of any of the following events shall be considered events of default for purposes of this section: The lessee's failure to pay any amounts due hereunder within five days after receipt of written notice from the Plan's independent fiduciary, or the lessee's failure to pay any amounts due hereunder within 30 days after payment becomes past due, if earlier; the lessee's failure to perform any other obligation under this agreement within ten days of receipt of written notice from the Plan's independent fiduciary; abandonment of the equipment by the lessee; the lessee's cessation of business; the commencement of any proceeding in bankruptcy, receivership or insolvency or assignment for the benefit of creditors by the lessee; false representation by the lessee as to its credit or financial standing; attachment or execution levied on lessee's property; or use of the equipment by third parties without lessor's prior written consent.

F. The Plan receives adequate security for the Lease. For purposes of this exemption, the term adequate security means that the Lease is secured by a perfected security interest in the leased property which will name the Plan as the secured party.

G. Insurance against loss or damage to the leased property from fire or other hazards will be procured and maintained by the lessee and the proceeds from such insurance will be assigned to the Plan.

H. The Plan shall maintain for the duration of any Lease which is sold to the Plan pursuant to this exemption, records necessary to determine whether the conditions of this exemption have been met. The Plan will continue to maintain the records for a period of six years following the expiration of the Lease or the disposition by the Plan of the Lease. The records referred to above must be unconditionally available at their customary location for examination, for purposes reasonably related to protecting rights under the Plan, during normal business hours by the Internal Revenue Service, the Department of Labor, Plan participants, any employer organization any of whose members are covered by the Plan, or any duly authorized employee or representative of the above described persons.

Temporary Nature of Exemption

Effective Date: The proposed exemption, if granted, will be effective December 30, 1985. However, the proposed exemption is temporary and, if granted, will expire five years from

[7] "Payout value" of a Lease is defined as the price that the lessee would pay at any point in time to obtain title to the leased property.

the date the exemption is granted with respect to the Plan's future purchases of Leases. The Plan may hold the Leases pursuant to the terms of the exemption subsequent to the end of the five year period.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which currently has 302 participants and assets with an approximate aggregate fair market value of $14,587,290. Rust, which does business as Rust Tractor Co. in Albuquerque, New Mexico, is in the business of selling heavy construction equipment. The Plan's trustee is Sunwest Bank of Albuquerque, N.A. (the Bank).

2. On April 3, 1985, the Department published Prohibited Transaction Class Exemption 85–68 (PTE 85–68, 50 FR 13293) which permits, under certain conditions, a plan to purchase and hold customer notes (Notes) from an employer of employees covered by the plan. The applicant represents that the Plan has acquired and held many Notes from Rust since 1985 in compliance with the terms and conditions of PTE 85–68.[8]

3. In addition, the Plan has also acquired from Rust, since December 30, 1985, approximately 76 Leases. These Leases are secured leases which were accepted by Rust in the normal course of its primary business activity as the seller of heavy construction equipment. The Leases involve equipment which is leased to third parties. The applicant represents that the Plan acquired the Leases from Rust in the belief that such transactions were also covered by PTE 85–68. The applicant has now requested retroactive relief with respect to the Plan's past acquisition of such Leases, and has also requested an exemption to permit the Plan to purchase additional Leases from Rust over a five year period.

4. The applicant represents that each of the transactions involving the Plan's acquisition of the Leases would have satisfied the conditions of PTE 85–68, but for the fact that these were Leases and not Notes. The applicant further represents that these conditions will continue to be satisfied with respect to future purchases by the Plan of Leases. The applicant specifies that the conditions of PTE 85–68 have been satisfied in the following manner:

(a) Prior to the purchase of any Lease, the transaction has been reviewed by Mr. Charles R. Seward, C.P.A., an independent certified public accountant who is the Plan's independent fiduciary with respect to this series of transactions. Mr. Seward performs no other services for either Rust or the Plan. On-going review of the performance of the customer-obligors is performed by the Bank, the Plan's independent trustee. In the event that a default in payment occurs, Rust is notified by the Bank and an immediate repurchase is effected for cash;

(b) The transactions have been on terms at least as favorable to the Plan as an arm's-length transaction with an unrelated party would be. The Plan's independent fiduciary, Mr. Seward, has represented that each transaction that he has approved for the Plan involving a Note or Lease has been in the best interests of the Plan and its participants. Mr. Seward further represents that each such transaction was for a price and on terms and conditions no less favorable to the Plan, and in many respects more favorable, than such transactions have in the past been engaged in between Rust and third party financial institutions;

(c) At no time has the value of the Notes/Leases held by the Plan approached 50% of the Plan's assets. As of December 31, 1992, the Notes/Leases represented 17.9% of the Plan's assets, and they represented 12.2% as of December 31, 1993. At no time have the Notes/Leases of any one customer exceeded 10% of the Plan's assets. With respect to Notes and Leases acquired by the Plan subsequent to the publication of this proposed exemption, the applicant represents that the value of such Notes and Leases in the aggregate will constitute no more than 25% of the total value of Plan assets.

(d) Rust has guaranteed immediate repayment of any defaulted obligation. The applicant represents that there have been defaults in only two of the 76 Leases, and Rust has repurchased both of those Leases;

(e) The Plan receives a perfected security interest in the tangible personal property purchased from Rust in return for the Note/Lease;

(f) The obligor is required to insure the collateral against fire and other hazards; and

(g) None of the terms of the Notes/Leases extends beyond the 60 month period applicable to Notes secured by heavy equipment.

5. The applicant represents that the Leases create essentially the same risk and obligations on the parties as a sale transaction, and thus pose no greater risk of loss to the Plan than in the case of the acquisition of a Note which is subject to PTE 85–68. To date the Plan has suffered no loss on any subject Lease transaction. Before entering into either a Note or Lease, Rust performs the same type of due diligence and requests the same type of financial information from the prospective purchaser/lessee. The agreements governing the transactions are very similar in that:

(a) Both transactions provide for monthly installments to pay for the use and possession of the equipment;

(b) Financing statements are filed by Rust in connection with both transactions;

(c) Upon default, Rust may accelerate the lessee/purchaser's obligations and immediately regain possession of the subject equipment;

(d) In the event of default under either transaction, Rust is entitled to its enforcement costs, including reasonable attorneys' fees;

(e) Both types of transactions contain warranty disclaimers and sell/lease the subject equipment ''AS IS WHERE IS'' with no express or implied warranties except the pass-through of the manufacturer's warranties;

(f) When either a Note or a Lease is sold to the Plan, an identical form of guarantee is executed by Rust in favor of the Plan as required by PTE 85–68. In the few transactions sold to the Plan which have gone into default, Rust has performed under its guarantees and the Plan has suffered no loss;

(g) Under New Mexico law, there is no practical difference in the rights and obligations of Rust between the subject Lease transactions and sales transactions involving Notes. The essential terms and conditions of the two types of transactions are identical.

6. In summary, the applicant represents that the proposed sales of the Leases by the Employer to the Plan meet the requirements of section 408(a) of the Act, because: (a) the sales will be limited to a five year period and will be limited to 25% of Plan assets with the condition that no more than 10% of Plan assets be invested in the Leases or Notes of any one customer; (b) the decision to purchase a Lease will be made by Mr. Seward acting as independent fiduciary for the Plan, and the customer/obligor's performance under the Lease will be monitored by the Bank acting as independent fiduciary on behalf of the Plan; (c) perfected security interests will be filed on the equipment; and (d) Rust will agree to indemnify the Plan against any loss related to the Leases and to repurchase any Leases that are in default.

For Further Information Contact: Mr. Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[8] In this proposed exemption, the Department expresses no opinion with respect to the applicability of PTE 85–68 to the Plan's acquisition and holding of such Notes.

Leavitt Group Profit Sharing and Retirement Savings Plan (the Plan)
Located in Cedar City, Utah
[Application No. D–09979]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) by the Plan of certain real property (the Property) to the Cedar Development Corporation (CDC), a party in interest with respect to the Plan, provided that (1) the Sale is a one-time transaction for cash; (2) the Plan does not suffer any loss nor incur any expense from the proposed transaction; and (3) the Plan receives as consideration from the Sale the greater of either $310,000 or the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan within the meaning of section 3(34) of the Act and a qualified profit sharing plan under section 401(a) of the Code and includes a cash or deferred arrangement under section 401(k) of the Code. Its related trust is exempt from taxation under section 501(a) of the Code. Effective October 1, 1994, the Plan adopted an investment policy allowing all participants of the Plan to direct investments of their Plan accounts into funds selected by the administrator of the Plan.

As of October 1, 1994, the Plan had 163 participants and total assets of $5,317,000, of which approximately 5.8 percent is invested in the Property.

The Plan was established effective January 1, 1975, by Security Enterprises Limited (SEL) and has since been adopted by some 40 entities affiliated with SEL, including CDC.

The fiduciary of the Plan is Dane O. Leavitt, who is the sole shareholder of Dane O. Leavitt, Inc. that owns one-seventh of SEL. Mr. Leavitt also holds a one-seventh interest, as a shareholder, in CDC, and is the Secretary of CDC. Mr. Leavitt is also the President of Dixie Insurance Agency which is the corporate general partner of SEL.

2. SEL is a Nevada limited partnership established December 27, 1972. It is owned equally by 7 corporations of which each corporation is wholly-owned by either one shareholder or by two, who are husband and wife. The individual shareholders are all related family members. SEL is engaged primarily in owning and providing services for affiliated insurance agencies.

CDC, a Nevada corporation that is wholly-owned by the same family members who control SEL, was established on February 14, 1966, and is engaged primarily in the ownership and development of real estate. CDC is also one of the sponsoring employers of the Plan.

3. The Property consists of 517.2 acres of mountain property, with attendant water rights, that is located on an area of Southwest Utah, known as Kamarra Mountain, in Iron County. The primary use of the area is for agricultural rangeland and recreation. Over the years the Plan leased the Property to unrelated persons for grazing purposes and has not undertaken any development of the Property. The Property has not produced any significant income for the Plan. Currently it is generating approximately $1,800 per year in grazing fees from local cattlemen and wool growers. Annual property taxes paid by the Plan have averaged under $100.

The Plan acquired the Property on January 16, 1981, by warranty deed executed by Barbara S. Williams.[9] Barbara Williams was not a party in interest with respect to the Plan nor related in anyway to any of the sponsors of the Plan or their shareholders. Barbara Williams conveyed the Property to the Plan as repayment of a $194,889.39 loan on January 16, 1981, made by the Plan, which enabled Barbara Williams to redeem the Property from a foreclosure sale instituted by the State Bank of Southern Utah. The Plan used this loan of $194,889.39 as the initial value for the Property. Since 1981 the Plan expended an additional $69,200 for physical improvements to the Property, legal fees, and payment of liens to obtain clear title to the Property. Based on appraisals, the Property increased in value during the period from 1981 to 1984, and then, during the period from 1984 to 1991 decreased in value. The announcement of anticipated MX Missile sites in the area that the Property is located caused a wave of land speculation throughout southern Utah. When there was a later announcement that the MX Missile system would not be built, land values plummeted in the area of the Property. The Plan has attempted to sell the Property by contacting realtors in the area and entered into several single party listing agreements. None of the agreements resulted in any offers to purchase the Property. In the spring of 1986 and again in 1987, the Plan advertised the Property for sale in newspapers of major cities in Utah, Nevada, Arizona, and California. Several bids were received by the Plan and one was accepted; however, the proposed purchaser defaulted and the sale was not consummated. The applicant represents that it is doubtful that the Plan could sell the Property for its current appraised value of $310,000 because of the property values in the areas of the Property. Two realtors from Cedar City, Utah in letters concur with applicant's conclusion as to the improbability of selling the Property at its current appraised value.

Mr. Bradford C. Schmutz, a Certified General Appraiser, State of Utah, located in Cedar City, Utah, determined the fair market value of the Property was $310,000, as of November 30, 1994. Mr. Schmutz represented that the Property has been personally inspected by him on various dates, although not on the date of the appraisal determination, because of snow conditions. He describes the Property as having 517.2 acres, agricultural mountain grazing land with a small, old cabin and some ponds on the Property. The Property is located at an elevation from approximately 7,000 feet to 8,600 feet. The winter months with the snow pack make the area impassible except by snowmobile.

4. CDC proposes to purchase the Property from the Plan for cash for the greater of either $310,000 or the fair market value as determined by appraisal at the time of the Sale. The applicant represents that the Plan will not incur any costs associated with the proposed Sale and will suffer no loss.

The applicant represents that the proposed transaction will be in the best interests of the Plan and its participants and beneficiaries because the Plan will recover all the funds spent in acquiring and holding the Property to the date of the Sale. In addition, the applicant represents that the Plan will not continue to hold an illiquid investment which has proven difficult to sell, and the funds received from the Sale can be

[9] The Department notes that the decisions to acquire and hold the Property are governed by the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this regard the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the Property.

put to better use in income producing assets at the direction of participants. This will assist the Plan in achieving its goal of having all Plan assets invested at the direction of Plan participants pursuant to the Plan's current investment policy. Furthermore, it is represented by the applicant that all costs in connection with the exemption application will be paid by the sponsor of the Plan.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because (a) the Sale involves a one-time transaction for cash; (b) the Plan will not incur any expenses or losses from the Sale, (c) the Plan will receive as consideration from the Sale the greater of either $310,000 or the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale; (d) the Sale will permit the Plan to obtain liquid funds that can be reinvested at the direction of the participants in higher yielding and more liquid assets; and (e) the Plan will not have to risk its assets in the development of the Property.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Rollover Individual Retirement Accounts for Joseph Shepard, Located in Jacksonville, Florida; William Haspel, Located in Bethesda, Maryland; and Richard Geisendaffer, Paul Petryszak, William Kroh and Rolf Graage, Located in Baltimore, Maryland (collectively, the IRAs)

[Application Nos. D–10054–10059]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the IRAs of all the common stock (the Stock) of Purchase Port Services, Inc. (PPS) held by the IRAs to PPS, provided that the following conditions are satisfied: (1) the sale of Stock by each IRA is a one-time transaction for cash; (2) no commissions or other expenses are paid by the IRAs in connection with the sale; and (3) the IRAs receive the greater of: (a) the fair market value of the Stock as determined by a qualified independent appraiser as of May 31, 1995, or (b) the fair market value of the Stock as of the time of the sale.[10]

Effective Date: If the proposed exemption is granted, the exemption will be effective July 31, 1995.

Summary of Facts and Representations

1. The IRA participants are officers, shareholders, directors and/or key employees of PPS. PPS has authorized one class of Stock, of which 30,000 shares are issued and outstanding. Approximately 72.09% of the Stock is individually owned by the shareholders whose IRAs are the subject of this proposed exemption. The remaining 27.91% of the Stock is held by the IRAs.

2. The Stock held by the IRAs was acquired in 1984 by two profit sharing plans, the GK Management, Inc. Profit Sharing Plan and the Port Management Services, Inc. Profit Sharing Plan (the Plans). The Stock ownership by the Plans resulted from self- directed investments made by the Plans' participants.

3. The Plans were terminated in 1988 because they could not satisfy the requirements of section 401(a)(26) of the Code, which became effective on January 1, 1989. Upon the termination of the Plans, the Stock of each participant under the Plans was rolled over to self-directed IRAs established for the benefit of each participant. These rollovers were made in accordance with the provisions of section 402 of the Code as then in effect.

4. Business and income tax considerations have compelled PPS to consider making an election to be taxed as a ''Subchapter S'' Corporation under section 1362(a) of the Code. However, IRAs cannot be shareholders of an ''S'' corporation. Accordingly, the applicants have requested an exemption to permit the IRAs to sell all of their shares of the Stock (8,374 in the aggregate) to PPS at their fair market value.

5. There is no established market for PPS Stock. PPS obtained an appraisal of the Stock dated May 31, 1995 from Barry Goodman, CFA, CPA, CBA, ASA, an independent business consultant and financial analyst in Washington, D.C. The applicants represent that Mr. Goodman is independent of the IRAs, their participants and PPS. Mr. Goodman has appraised the Stock as having a fair market value of $825.30 a share as of May 31, 1995.

6. The applicants have requested the exemption proposed herein to permit PPS to purchase all of the Stock held in their IRAs. PPS will pay the greater of (i) the fair market value of the PPS Stock as of May 31, 1995 as established by Mr. Goodman's appraisal, or (ii) the fair market value of the Stock as of the date of the sale. The IRAs will pay no fees, commissions or other expenses in connection with the transactions.

7. The applicants represent that presently the assets of each of the IRAs consist almost entirely of appreciated PPS Stock. Therefore, the IRAs have virtually no diversity and no liquidity. The applicants further represent that, as a practical matter, the only potential purchasers of the Stock at full fair market value are the IRA participants and PPS, with the effect that the IRAs would have great difficulty disposing of the Stock in a transaction at full value that did not involve a sale to disqualified persons. The IRA participants have attained, or will shortly attain, age 59½; therefore, it will be appropriate for the IRAs to commence distribution to their participants in the near term. Thus, the applicants represent that the proposed exemption will be in the interest of the IRA participants and their beneficiaries because it would make the IRAs liquid, provide diversity, maximize the value of the PPS Stock held by the IRAs, and permit cash distributions to the IRA participants (and/or to their beneficiaries) when such distributions are appropriate and/or required by the Code.

8. In summary, the applicants represent that the proposed transactions satisfy the criteria contained in section 4975(c)(2) of the Code because: (a) the proposed sales will be one-time transactions for cash; (b) no commissions or other expenses will be paid by the IRAs in connection with the sales; (c) the IRAs will be receiving not less than the fair market value of the Stock as determined by a qualified, independent expert; and (d) each of the IRA participants is the only participant in his IRA, and each has determined that the proposed transaction is appropriate for and in the best interest of his IRA and desires that the transaction be consummated with respect to his IRA.

Notice to Interested Persons: Because each of the IRA participants is the only participant in his own IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days after publication of this notice in the **Federal Register**.

For Further Information Contact: Gary H. Lefkowitz of the Department,

[10] Pursuant to 29 CFR 2510.3–2(d), the IRAs are not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 18th day of July 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–17961 Filed 7–20–95; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 95–61; Exemption Application No. L–09933, et al.]

Grant of Individual Exemptions; United Food and Commercial Workers Union, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

United Food and Commercial Workers Union Local 789 and St. Paul Food Employers Health Care Plan (the Plan) Located in Bloomington, Minnesota

[Prohibited Transaction Exemption 95–61; Exemption Application No. L–09933]

Exemption

The restrictions of section 406(a) of the Act shall not apply to the purchase of prescription drugs, at discount prices, by Plan participants and beneficiaries, from Supervalu Pharmacies, Inc. (SPI) and Cub Foods (Cub), parties in interest with respect to the Plan, provided the following conditions are satisfied: (a) the terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party; (b) any decision by the Plan to enter into agreements governing the subject purchases will be made by Plan fiduciaries independent of SPI and Cub; and (c) at least 50% of the preferred providers participating in the Preferred Pharmacy Network (PPN) which will be selling prescription drugs to the Plan's participants and beneficiaries will be unrelated to SPI and Cub.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 22, 1995 at 60 FR 27127.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)